

COUNTY OF HAWAI‘I PLANNING DEPARTMENT
RECOMMENDATION

JOHN C. CROSS
SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION
(PL-SMA 2025-000082)

Upon careful review of the applicant's request against the guidelines for a Special Management Area Use Permit, the Planning Director is recommending that **this request to demolish and renovate the Kona Seaside Shops be approved by the Leeward Planning Commission**. Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this recommendation based upon additional information presented at the public hearing. This approval recommendation is based on the following findings:

The applicant, John Cross, is requesting a Special Management Area Use Permit to renovate the Kona Seaside Shops, which includes the demolition of three (3) structures with a combined total of 2,080 square feet (sf) of retail/office spaces as outlined in Exhibit 1 pages 36-37 of the application package. The applicant also proposes additions and renovations to two (2) existing structures, the first being an addition of 1,100-sf to an existing 1,800-sf commercial building and the second being the addition of 1,854 sf to an existing 2,880-sf retail store for a proposed new restaurant. Additionally, the applicant proposes to construct two (2) new 200-sf kiosks, new outdoor seating totaling 1,654-sf and renovating an ADA compliant courtyard and parking area on a 33,411-sf lot situated in the Special Management Area. In all, the total gross area of the proposed project is 9,688-sf. New landscaping will also be included.

When reviewing proposed developments within the SMA, the Planning Commission should follow the below listed guidelines as established within HRS 205A-26 (SMA guidelines):

No development shall be approved unless the Planning Commission has first found:

- (A) That the development will not have any substantial adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests. Such adverse effects shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect, and the elimination of planning options.
- (B) That the development is consistent with the objectives, policies, and Special Management Area guidelines of this chapter and any guidelines enacted by the legislature; and
- (C) That the development is consistent with the county general plan and zoning. Such a finding of consistency does not preclude concurrent processing where a general plan or zoning amendment may also be required.

In review of the SMA guidelines as listed under HRS 205A-26(2) (A) above, the proposed development of the subject parcel will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. In considering the significance of potential environmental effects, the Director shall consider the sum of those effects that adversely affect the quality of the environment and shall evaluate the overall and cumulative effects of the action. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken might not have a substantial adverse effect and elimination of planning options.

A “substantial adverse effect” is determined by the specific circumstances of the proposed use, activity, or operation. In determining whether a proposal may have a substantial adverse effect on the environment, the Director shall consider every phase of the proposed action and expected consequences, either primary or secondary, or the cumulative as well as short or long-term effect of the proposal. The project has been reviewed against the factors that may constitute a substantial adverse effect as listed

under Planning Commission Rule 9-10(h)(1 through 10):

- (1) involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and viewplanes outlined in the General Plan or other adopted plans.
- (2) curtails the range of beneficial uses of the environment.
- (3) conflicts with the long-term environmental policies or goals of the General Plan or the State Plan.
- (4) significantly affects the economic or social welfare and activities of the community, County or State.
- (5) involves substantial secondary impacts, such as population changes and effects on public facilities.
- (6) in itself has no substantial adverse effect but cumulatively has considerable adverse effect upon the environment or involves a commitment for larger actions.
- (7) substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat.
- (8) detrimentally affects air or water quality or ambient noise levels.
- (9) affects an environmentally sensitive area, such as flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal water; or
- (10) is contrary to the objectives and policies of the Coastal Zone Management Program and the Special Management Area Guidelines of Chapter 205A, HRS.

It should be noted that under Planning Commission Rule 9-10 (h)(9), a proposed use, activity or operation may constitute a substantial adverse impact if it affects environmentally sensitive areas, such as flood plains, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal water. In this review, it has been determined that the subject property is located approximately 100 feet from the nearest shoreline, and the proposed project will not have any activity within the shoreline area. Additionally, the property is adjacent to three established public shoreline access sites; i) Kailua Pier approximately 175-ft from the subject property, ii) Kamakahonu Beach, approximately 250-ft to the north and iii) Niumalu Beach access approximately 715-ft to the south along Ali'i Drive. None of the listed public access points will be

impacted by the proposed project.

Coastal visual impacts are not anticipated as a result of the proposed development given the existing development of the property and the other surrounding parcels located mauka of Palani Road and Ali'i Drive. As the project site is already fully developed, the proposed improvements are not expected to result in any additional adverse effects on shoreline views.

The entire project site is located between 6 and 15-feet elevation above sea level, and within the FEMA-FIRM flood zone "AE-10", which is a high-risk flood zone where there is a 1% annual chance of flooding. The applicant will be required to comply with appropriate flood zone requirements outlined in County Code (i.e., Chapter 27, Floodplain Management). With these requirements, the proposed development should not create a substantial adverse effect on any environmentally sensitive areas, public sites, or natural resources.

The proposed project involves the demolition of three (3) existing structures, the addition and renovation of two (2) existing structures, the construction of two (2) new kiosks, the installation of a new outdoor seating area, and the renovation of an ADA-compliant courtyard and parking area. These improvements are expected to have minimal cumulative impacts, as all development will be confined to the subject parcel. Temporary noise, dust, and other construction-related effects will be limited to the duration of site development activities and will be mitigated via appropriate Best Management Practices.

While the project includes a new restaurant, outdoor bar, seating areas, and the addition of eleven (11) new parking stalls, any incremental increase in traffic is not expected to trigger the requirement for a Traffic Impact Analysis Report (TIAR).

Although no professional floral and faunal survey of the site was completed, the urban and highly altered nature of the surrounding area makes the presence of rare or sensitive flora and fauna unlikely. The subject property has been fully developed for approximately 50 years, and there is no known floral, or faunal resources present on the site. Accordingly, limiting all improvements to the existing parcel ensures that no impacts to terrestrial biological resources would occur, and potential impacts to the ocean and associated aquatic resources will be avoided. No historic sites are known to exist within

the project area, and no adverse effects to cultural resources or practices are anticipated. Access to cultural and recreational resources will remain protected through the three established public access paths located adjacent to or in close proximity to the subject parcel.

In review of the SMA guidelines as listed under HRS 205A-26(2) (B) above, the proposed development is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure.

The purpose of Chapter 205A, Hawai'i Revised Statutes (HRS) and Special Management Area Rules and Regulations of the County of Hawai'i, is to preserve, protect, and where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options. The objectives and policies of Chapter 205A, HRS include, but are not limited to, the protection of coastal recreational resources, historic resources, scenic and open space resources, coastal ecosystems, marine resources, beaches, and controlling development in coastal hazard areas.

Coastal Recreational Resources:

The proposed project will support public coastal recreational opportunities through maintenance of land adjacent to an established public shoreline access by providing an attractive viewshed for residents and visitors utilizing the Ali'i commercial and shoreline corridor. There are no dedicated mauka to makai shoreline access paths located on the subject property and the proposed project would not restrict any shoreline uses such as fishing, surfing, and other water-dependent activities. Parking for the shoreline public access will continue to be along Palani Road and Ali'i Drive as well as at the Kailua Pier and will retain its current level during construction and the continued use of the parcel.

Historic Resources:

The subject parcel shows no indication of containing historic sites, given the long-standing pattern of development on the property and along Palani Road and Ali'i Drive.

A dry-stacked stone wall exists along the southern property boundary; however, its historic significance, if any, has not been determined. Accordingly, the wall will remain in place and will not be removed, altered, or modified. A chapter 6E-42 application for review from the State Historic Preservation Division (SHPD) was submitted regarding the proposed development, but as of the date of this report, no formal comments or determinations have been issued by SHPD.

Scenic and Open Space Resources:

The proposed project will not result in any adverse impacts to public sight lines or scenic resources. Kuakini Highway is located over 580 feet mauka of the subject parcel, with substantial intervening development that fully obstructs any potential views of the project site. Similarly, scenic views from Queen Ka‘ahumanu Highway will remain unaffected, as the highway is situated more than 2,000 feet from the parcel and the intervening area is fully developed with commercial and multi-family uses. Furthermore, scenic views toward the shoreline will not be altered, as there is no existing development makai of the project site that currently obstructs coastal vistas. Additionally, stormwater and runoff management measures, including the use of gravel bags, silt fencing, restrictions of construction activities to designated work areas, and maintenance of existing drywells to direct water away from the shoreline—will be implemented to ensure that no adverse impacts occur to nearby coastal waters.

Coastal Ecosystems and Marine Resources:

The proposed development will integrate the site’s sewer infrastructure with the existing County sewer system that runs along Palani Road and Ali‘i Drive. Additionally, stormwater and runoff management controls such as installing gravel bags, silt fences, limiting construction activities to designated areas and maintaining existing drywells to ensure water is directed away from the shoreline will be implemented to assure no impacts to nearby coastal waters. As the subject property lies approximately 100 feet from the shoreline and at an elevation between 6 and 15 feet above sea level, the proposed project is expected to have minimal to no impact on coastal or marine resources (including public access).

Beaches:

There are no beaches on the subject property, however, the property is located adjacent to existing public shoreline access paths that support the public's use of the Kailua Pier and nearby small sandy and rocky beaches.

Coastal Hazards:

The proposed project is located on a non-shoreline parcel bounded on the makai side by County-owned Palani Road and Ali'i Drive. The subject property lies entirely within FEMA Flood Zone "AE-10," a high-risk flood zone designation indicating a 1-percent annual chance of flooding. With respect to tsunami or coastal storm hazards, the nearest mauka-makai evacuation route is Palani Road, which is located immediately adjacent to the subject parcel.

In review of the SMA guidelines as listed under HRS 205A-26(2) (C) above, the proposed development is consistent with the County General Plan, the Zoning Code and the Kona Community Development Plan. The property is zoned Resort-Hotel 750 square feet (V-.75) which provides accommodation to the needs and desires of visitors, tourists and transient guests. The continued retail and commercial use of the property is consistent with the current zoning designation and will result in an intensity of land that is no higher than what is permitted by the V-.75 zoning. Staff notes that the proposed development will require Plan Approval, and as such the plans may need to be modified to meet the Zoning Code requirements such as, but not limited to, on-site parking, landscaping, property line setbacks, minimum height of the structure, drainage, and access to Palani Road from the project parcel.

The proposed project is consistent with the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates the subject area as Resort Node (ren). This designation is intended to support visitor accommodation and related commercial facilities, rather than general residential development, and allows for minimum densities of 750 square feet per unit.

The proposed improvements are aligned with the goals, policies, and standards applicable to the Land Use and Housing (Resort Node) elements of the General Plan. Additionally, the project is compatible with the existing character of the surrounding neighborhood, which is developed with retail uses and a variety of other commercial

activities.

The Kona Community Development Plan (KCDP) was developed and adopted by the County Council on September 25, 2008, as Ordinance No. 08 131, as amended by Ordinance 19 091, effective September 18, 2019. With regards to the KCDP, the subject parcel is located within the Kona Urban Area as defined by the Kona Land Use Map.

The Kona CDP has goals, objectives, and policies relevant to housing through its Land Use section that specifically designate that *“most of the future growth in Kona will be directed to an “Urban Area” (UA) as defined in the Kona Land Use Map”*. It further states that *“growth would be directed to compact villages located along proposed transit routes or to infill areas within, or adjacent to, existing development”*. A similar objective of the KCDP aims to identify areas where higher intensity growth areas should occur and areas where the rural character and open space along the shoreline should be preserved. As this project is within the Kona Urban Area and is providing retail and commercial opportunities to the Ali‘i commercial corridor, the requested use would not be contrary to the goals of the Kona CDP nor impact the character of the surrounding area. Additionally, prior to submitting an application for plan approval and building permits, the project will go before the Kona Village Design Commission for further review.

This project appears to be consistent with the policies of existing recreation with the continued use of the public shoreline access and wastewater, as the proposed development will be connected to the County wastewater system such that no individual wastewater system will be required.

The proposed development will not have a significant adverse impact to traditional and customary Hawaiian rights: In view of the Hawai‘i State Supreme Court’s “PASH” and “*Ka Pa‘akai O Ka‘Aina*” decisions, the issue relative to native Hawaiian rights, such as gathering and fishing rights, must be addressed. These rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: The applicant stated there is no customary native Hawaiian rights being exercised on the subject property and it is unknown whether the subject property or immediate surrounding area was ever used for the gathering of

plants by native Hawaiians. Based on the long history of disturbance and development impacts from surrounding projects (i.e., Ali'i Drive) it would appear unlikely that the site would serve such purpose.

The valuable cultural, historical, and natural resources found in the permit area:

The primary valuable cultural and natural resource in this area is the coastal area, and the public shoreline access paths that are located near to the subject parcel. To that end the applicant supports the continued use of the public shoreline access and understands it is a valuable resource for Kona communities.

Possible adverse effect or impairment of valued resources:

The proposed demolition of existing structures and construction of additions to the remaining buildings will involve minor site grading and grubbing, as well as improvements to the parking areas and associated landscaping. The principal valued resource in the vicinity is the public shoreline access. These accessways will remain open, unobstructed, and free of encroachments throughout all construction activities and during the future operation of the property.

Feasible actions to protect native Hawaiian rights:

The natural and cultural resources related to traditional and customary cultural practices are easily accessible from the public shoreline access paths located nearby to the subject parcel. The proposed project will only aim to help maintain that access and use. The quality of the shoreline area and public access will be protected by project design considerations that include drainage controls for stormwater runoff and the connection of the sites wastewater to the County wastewater system.

Lastly, this approval is made with the understanding that the Applicant remains responsible for complying with all other applicable government requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements

will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above findings, it is determined that the proposed development will not have any substantial adverse impacts on the environment, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Zone Management and Rule No. 9 of the Planning Commission relating to the Special Management Area. Approval of this request is subject to the following conditions:

1. The applicant(s), its successor(s) or assign(s) (Applicant) shall be responsible for complying with all of the stated conditions of approval.
2. The Applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. Demolition and Construction of the Kona Seaside Shops shall be conducted in a manner that is substantially representative of plans and details as contained within the Special Management Area Use Permit application received August 22, 2025, all supplemental material, and representations made to the Leeward Planning Commission.
4. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant(s), successor(s) or assign(s) shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. Landscaping shall be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements) and Chapter 25 (Zoning Code), Hawai'i County Code.
5. Prior to issuance of any Plan Approval or Building Permits, the Applicant shall demonstrate full compliance with the off-street parking, parking stall dimensions,

and loading space requirements of Hawai'i County Zoning Code §§25-4-51(4), 25-4-53(a) and (b), and 25-4-56(1). Compliance shall be achieved by either securing a duly executed shared parking agreement sufficient to meet required parking stalls or reducing the gross floor area of the proposed commercial space to conform to the applicable parking and loading requirements. No Variance Application for relief from these requirements shall be accepted or approved, and no Plan Approval or Building Permits shall be issued until the Planning Director verifies compliance with these provisions.

6. Prior to the issuance of a water commitment by the Department of Water Supply (DWS), the Applicant shall submit the anticipated maximum daily water usage calculations as prepared by a professional engineer licensed in the State of Hawai'i to the DWS. A water commitment deposit shall be paid to the DWS within 180 days from the approval of this permit in accordance with Rule 5 of the Department of Water Supply's Rules and Regulations. The Applicant is responsible for maintaining valid water commitments to support the proposed use until such time that required water facilities charges are paid in full.
7. The Applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply.
8. The Applicant shall minimize the demand for potable water for landscape irrigation by incorporating alternative water sources—such as rainwater catchment or reclaimed water—where feasible; selecting drought-tolerant, native, or otherwise climate-appropriate plant species; limiting turf areas to those necessary for functional use; utilizing healthy soils and appropriate grading to reduce water runoff; and avoiding or minimizing the use of high-water-demand plantings, including turfgrass.
9. The Applicant shall comply with Chapter 27 - Flood Control, of the Hawai'i County Code.
10. All earthwork and grading shall conform to Chapter 10, Erosion and

Sedimentation Control of the Hawai'i County Code.

11. Artificial light from exterior lighting fixtures, including, but not necessarily limited to floodlights, uplights or spotlights used for decorative or aesthetic purposes shall be prohibited if the light directly illuminates, or is directed to project across property boundaries toward, the shoreline and ocean waters, except as may otherwise be permitted pursuant to Section 205A-71(b), Hawaii Revised Statutes.
12. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
13. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage study shall be prepared by a professional civil engineer licensed in the State of Hawai'i and submitted to the Department of Public Works prior to issuance of Final Plan Approval. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
14. The property shall connect to the public sewer in accordance with Section 21-5 of the Hawai'i County Code prior to issuance of a Certificate of Occupancy.
15. All driveway connections to Palani Road shall conform to Chapter 22, County Streets, of the Hawai'i County Code. Sight distance shall meet applicable recommendations of the Hawai'i Statewide Uniform Design Manual and/or the AASHTO Policy on Geometric Design of Highways and Streets.
16. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g., rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, the Applicant shall cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-

7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

17. Comply with all applicable laws, rules, regulations, and requirements of affected agencies for the proposed project.
18. An extension of time for the performance of the conditions contained herein may be granted by the Planning Director upon the following circumstances:
 - a) The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence.
 - b) Granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
 - c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).

If the Applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

19. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.